



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Charles W. Nichols
P.O. Box 1687
Palestine, Texas 75802

OR94-341

Dear Mr. Nichols:

On behalf of the City of Palestine, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22192.

The City of Palestine received an open records request for certain information including a deposition given by Andy McCuiston in the litigation between the city and Cathy Stark. Although some confusion exists on this point, you apparently received a request for this information on September 23, 1993. You requested a decision from this office in a letter dated November 9, 1993, arguing that the deposition is excepted from disclosure under sections 552.103(a) and 552.107(1) of the Government Code (formerly article 6252-17a, sections 3(a)(3) and 3(a)(7)).

You failed to request a decision within ten days of receiving a request for information as required by section 552.301 of the Government Code, and thus, the deposition requested is presumed public. Section 552.301 requires a governmental body to release requested information or to request a ruling from the attorney general within ten days of receiving a request for information that the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ). To overcome this presumption, the

¹The Seventh-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

governmental body must show a compelling interest to withhold the information. *See Hancock*, 797 S.W.2d at 381-82. A compelling interest to withhold the information arises when the information is made confidential by law under section 552.101 or when a third-party's interests are at issue.

You have not shown compelling reasons why the deposition at issue here should be withheld. Neither section 552.103(a) nor section 552.107(1) would except the deposition from disclosure even if you had requested a ruling from this office within ten days. Section 552.103(a) does not protect information once all the parties to the litigation have inspected it. Open Records Decision No. 551 (1990) at 4-5. Similarly, section 552.107(1) applies only when the communication between the attorney and the client is "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client" Tex. R. Civ. Evid. 503(a)(5). A communication cannot fulfill this requirement when persons with interests adverse to the client are present when the communication is made. *See Lewis v. State*, 709 S.W.2d 734, 736 (Tex. App.—San Antonio 1986, pet. ref'd, untimely filed). In this case, the deposition reveals that all the parties to the litigation were present when the deposition was taken and have had access to the record of the deposition. Therefore, you may not withhold the deposition under either section 552.103(a) or section 552.107(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 22192

Enclosures: Submitted documents

cc: Mr. Joe Ed Bunton
925 North Link Street
Palestine, Texas 75801
(w/o enclosures)